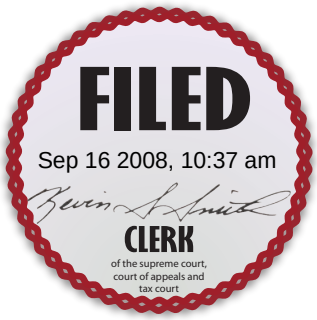

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IN THE
COURT OF APPEALS OF INDIANA

SYLVESTER JOHNSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 90A02-0801-CR-110
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable David L. Hanselman, Sr., Judge
Cause No. 90C01-0604-FB-4

September 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Sylvester Johnson appeals the sentence imposed following his plea of guilty to aiding, inducing or causing dealing in a Schedule I, II, or III controlled substance, a class B felony.[1]

We affirm.

ISSUE

Whether Johnson's sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

Johnson met Ashley Brown when they were psychiatric patients at a Fort Wayne hospital. Brown moved into Johnson's apartment in December of 2005. On or about January 5, 2006, Brown became very ill. She asked that Johnson not seek medical assistance for her because she had been taking drugs. Instead, she asked him to get her some pain medication.

On or about January 7, 2006, Johnson asked Scott Tarter whether he had any drugs for Brown. Tarter later brought some methadone tablets to Johnson's apartment and gave them to Brown. In exchange, Johnson gave Tarter twenty dollars.

On January 9, 2006, Johnson found Brown unresponsive and telephoned 911. Approximately one hour later, doctors pronounced her dead. An autopsy revealed that she had died from a pulmonary embolism and had several drugs in her system at the time of her death.

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[1] Ind. Code §§ 35-41-2-4; 35-48-4-2.

Johnson gave a statement to police, admitting that he had obtained methadone pills for Brown. Tarter also gave a statement to police, admitting that he had sold methadone pills to Johnson for twenty dollars and that Johnson had told him that he intended to sell the pills to Brown for thirty dollars.

On April 12, 2006, the State charged Johnson with class B felony aiding, inducing or causing dealing in a schedule I, II, or III controlled substance. On September 25, 2007, the trial court granted Johnson's motion to withdraw his plea of not guilty and entered a plea of guilty on his behalf. The trial court ordered a pre-sentence investigation report ("PSI") and set the matter for sentencing.

According to the PSI, Johnson was convicted in March of 1998 for class A misdemeanor battery. The trial court sentenced him to one year, with all but ninety days suspended, and placed him on probation for one year. The trial court revoked his probation on August 19, 1999, after he tested positive for drugs.

The PSI also showed that Johnson was convicted of class A misdemeanor possession of marijuana in April of 2006.[2] The trial court sentenced him to one year, with all but fifty-six days suspended, and placed him on probation for one year. On July 19, 2007, the trial court extended his probation for six months after the State filed a petition to revoke his probation on May 14, 2007, for failure to complete counseling. Johnson also admitted to testing positive for marijuana while on probation.

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[2] This conviction arose after police officers, executing an arrest warrant for the present offense, discovered marijuana in Johnson's apartment.

The trial court held a sentencing hearing on January 15, 2008, during which three witnesses testified on Johnson's behalf. Phil and Karen Gouloff testified that Johnson came to live with them following Brown's death. Phil testified that Johnson minded "his P's and Q's at the house" and helped take care of Phil's mother. (Tr. 36). He described Johnson as "a pretty good guy." *Id.* Karen testified that they had had "no problems" with Johnson but were not aware that he had tested positive for marijuana while residing with them. (Tr. 30). Monica Kelsey testified that she had met Johnson through Brown and believed Johnson to be "a good guy . . . ." (Tr. 34). The trial court sentenced Johnson to ten years in the Department of Correction, with six years suspended.

DECISION

Johnson asserts that his sentence is inappropriate. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "'persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress*, 848 N.E.2d at 1081. The advisory sentence for a class B felony

is ten years.[3] Johnson received the advisory sentence of ten years, with six years suspended.

1. Nature of the Offense

Regarding the nature of his offense, Johnson argues that his sentence is inappropriate because he "merely aided and abetted" the exchange of drugs between Brown and Tarter; he did not initiate or plan the transaction; he "was not acting for his own benefit when he served as a conduit between Tarter and Brown"; he "received no benefit from the transaction"; he cooperated with law enforcement; and "the record does not establish that the Methadone pills contributed to Brown's death." Johnson's Br. at 10. We disagree.

Here, the record shows that Brown became violently ill over a period of several days due to drug withdrawal. Although Johnson considered getting medical help for her and had ample opportunity to do so, he did not; rather, he obtained several methadone pills for her. According to his statement to the police, Johnson "didn't care what nobody [sic] gave her, [he] wanted her to act different." (App. 15). Furthermore, during the sentencing hearing, he stated that he had obtained the pills for Brown because he "wasn't going to go through" cleaning up after her again. (Tr. 23). Brown subsequently died with several drugs in her system. Given these facts, we cannot say that Johnson's sentence is inappropriate.

[3] Pursuant to Indiana Code section 35-50-2-5, "[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years."

2. Johnson's Character

Johnson further argues that his sentence is inappropriate based on his character; specifically, his lack of significant criminal history; his "myriad of illnesses, including heart disease, high blood pressure, major depression, and diabetes" (Johnson's Br. at 11); his limited cognitive abilities; his guilty plea; and the positive impression he has made on others since his arrest. Again, we disagree.

a. *Criminal history*

As to Johnson's prior convictions, the record reflects that his criminal history consists of one misdemeanor conviction for battery and one misdemeanor conviction for possession of marijuana. Although this does not necessarily constitute a significant criminal history, we note that he twice violated his probation.

b. *Mental illness, physical disabilities, and cognitive functioning*

Johnson presented evidence that he suffers from depression. While recognizing Johnson's history of depression, we find nothing in the record to indicate that 1) he was unable to control his behavior due to his mental disorder; 2) his mental disorder limited his ability to function; or 3) there was a nexus between the disorder and the crime. *See Weeks v. State*, 697 N.E.2d 28, 30 (Ind. 1998) (finding that in determining the weight to be given to a mental illness in sentencing, the trial court should consider several factors, including "the extent of the defendant's inability to control his or her behavior due to the disorder or impairment"; the "overall limitations on functions"; the duration of the disorder or impairment; and "the extent of any nexus between the disorder of impairment and the commission of the crime").

As to Johnson's physical impairments, the record does not indicate that his ailments require constant medical intervention; moreover, it appears from the record that most of his ailments are controlled with medication. *See Henderson v. State*, 848 N.E.2d 341, 345 (Ind. Ct. App. 2006) (finding no evidence that the defendant's multiple health problems should be a factor in determining an appropriate sentence where the defendant took medication for most of her health problems and "she did not present any evidence demonstrating that her medical conditions would be untreatable during incarceration or would render incarceration a hardship").

Regarding his cognitive abilities, we note that Johnson admitted that he knew that "getting drugs from [Tarter] was illegal[.]" (Tr. 27). Given the foregoing, we find that Johnson has failed to show that his depression, physical ailments, or limited cognitive abilities warrant a reduction in his sentence.

c. *Guilty plea*

Regarding Johnson's guilty plea, the substantial evidence against him, including his own statement and Tarter's statement, indicates that his guilty plea was pragmatic. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("[A] guilty pleas does not rise to the level of significant mitigation . . . where the evidence against [the defendant] is such that the decision to plead guilty is merely a pragmatic one."). Moreover, despite the evidence against him, Johnson waited more than one year and filed numerous motions prior to entering a plea of guilty. Thus, his guilty plea did not save the State significant time or money. *See Lindsey v. State*, 877 N.E.2d 190, 198 (Ind. Ct. App. 2007) (finding

that a guilty plea is not significant where the State does not reap a substantial benefit in saved time or money).

Although three witnesses testified on Johnson's behalf, he has failed to persuade us that his sentence is inappropriate in light of the nature of the offense and his character. Accordingly, we find no abuse of discretion, particularly where Johnson received the advisory sentence of ten years, with six years suspended.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.